

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRACI RANZAU

Claimant

VS.

PRESBYTERIAN MANORS

Self-Insured Respondent

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Docket No. 1,026,466

ORDER

Respondent appealed the July 23, 2007, Order entered by Administrative Law Judge Nelsonna Potts Barnes. The Board placed this appeal on its summary docket for disposition without oral argument.¹

APPEARANCES

Steven R. Wilson of Wichita, Kansas, appeared for claimant. Kathleen N. Wohlgemuth of Wichita, Kansas, appeared for respondent.

RECORD

The record consists of the transcript and exhibits from the May 3, 2007, penalties hearing before Judge Barnes.

ISSUES

Claimant requested penalties after perceiving respondent's counsel was interfering with claimant's medical treatment and ignoring the Judge's order authorizing Dr. Pedro A. Murati to treat claimant. Following a hearing on May 3, 2007, Judge Barnes entered the July 23, 2007, Order in which the Judge found claimant was entitled to receive penalties in the sum of \$25 for the late payment of a medical bill. Moreover, the Judge also found respondent must comply with a September 21, 2006, Order in which the Judge named Dr. Murati, and his referrals, as the authorized treating physician until such authorization was revoked. The July 23, 2007, Order states and holds, in pertinent part:

¹ For purposes of K.S.A. 2006 Supp. 44-551(i)(1), the appeal was deemed submitted on September 18, 2007.

5. A hearing on Claimant's motion was scheduled on September 21, 2006. The hearing was cancelled by the parties and an Agreed Order was presented to the Court for approval and signature. This Order prepared by the parties and approved by the Court provided that Dr. Murati would be the authorized treating physician for all treatments, tests, and referrals, except referrals to rehabilitation hospitals. **The Order further stated that any change to Dr. Murati's authorization must be approved by the Court.**
6. The parties are currently before the Court due to a long standing and ongoing difference of opinion on how to interpret the September 21, 2006 Order which they drafted and which the Court approved.
7. The Claimant contends that the September 21, 2006 Order authorized Dr. Murati for all treatment, tests and referrals. Each time Respondent fails to comply with a treatment modality proposed by Dr. Murati, the Claimant files an Application for Penalties for sanctions against Respondent for failure to comply with the Court's Order of September 21, 2006.
8. The Respondent has taken the position that procedurally, the Claimant should file an Application for Preliminary [H]earing seeking authorized medical treatment when Respondent disagrees with Dr. Murati's proposed plan.
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11. If the Respondent disagrees with Dr. Murati's treatment or referrals, **Respondent should file a Preliminary Hearing Application** requesting a change of physician or requesting that medical benefits be terminated. **Respondent does not have the option of refusing medical treatment and then demanding that Claimant take affirmative steps to enforce the Court's previous orders regarding treatment.**
12. Accordingly, the Court finds that Claimant is entitled to a \$25.00 penalty for the late payment of an authorized medical bill, and that **Respondent must comply with Dr. Murati's proposed medical treatment and referrals until such time that Dr. Murati's authorization is changed by the Court.**²

Respondent contends Judge Barnes erred and the July 23, 2007, Order should be reversed. Moreover, respondent contends claimant's request for medical treatment with Dr. Alan Moskowitz should be denied. Respondent first argues paragraph 12 quoted immediately above is an order for medical compensation and, therefore, the Judge exceeded her jurisdiction by entering such an order at a penalties hearing. In addition,

² ALJ Order (July 23, 2007) at 2, 3 (emphasis added).

respondent argues that the order for medical compensation was entered without the appropriate notice of intent regarding requesting a preliminary hearing, without filing an application for a preliminary hearing, and without providing notice that a preliminary hearing was to be held. Respondent's position on this issue may be summarized, as follows:

The Administrative Law Judge exceeded her jurisdiction when she ordered, in essence, that Respondent pay for the surgery with Dr. Moskowitz without requiring Claimant to comply with the procedures required of demand, application for hearing and notice. Claimant did not comply with K.S.A. 44-512a or K.S.A. 44-534a(a)(1).³

Next, respondent argues the May 3, 2007, penalties hearing was conducted to address claimant's March 19, 2007, Application for Penalties and January 30, 2007, demand for penalties for respondent's failure to pay medical bills and not claimant's demands for medical treatment from Dr. Moskowitz. In that regard, respondent contends claimant's April 26, 2007, letter demanding compliance with Dr. Moskowitz's recommendations and claimant's May 3, 2007, letter demanding compliance with Dr. Murati's recommendations could not be the basis for the May 3, 2007, penalties hearing as the 20-day period to comply with those demands had not expired at the time of the hearing.

Regarding the merits of claimant's proposed low back surgery, respondent contends the surgery, which was scheduled for September 26, 2007, was not warranted. But more importantly, respondent argued to the Judge that the request for surgery and compliance with the September 21, 2006, Order should be taken up at a preliminary hearing as respondent has allegedly complied with Dr. Murati's request that claimant be evaluated by a surgeon.⁴

Conversely, claimant argues the July 23, 2007, Order should be affirmed. Claimant contends the May 3, 2007, hearing was conducted to address claimant's request for penalties on the grounds respondent failed to comply with the September 21, 2006, Order. Moreover, at the May 3, 2007, hearing, claimant requested the Judge to order respondent to cease interfering with the medical treatment recommended by the authorized physician. Claimant argues, as follows:

The claimant's request for penalties is certainly appropriate. Claimant counsel submitted a request for payment of Kansas Imaging Consultants' bill by twenty (20) day demand [which was delivered] and signed [for] by respondent

³ Respondent's Brief at 6 (filed Aug. 23, 2007).

⁴ M.H. Trans. at 14, 21, 22.

counsel and the insurance carrier on January 31, 2007. That bill was not paid until February 28, 2007. Hence, the request for penalties.

Secondly, respondent counsel has consistently interfered with the court ordered authorized physicians throughout this case. In particular, the court's order of September 21, 2006, authorizing Dr. Murati for all treatment, tests and referrals has been consistently ignored, challenged and frustrated by respondent counsel. The court's order was and is clear that it remains in full force and effect until further order by the Administrative Law Judge.

Respondent counsel initially refused to authorize a surgical consult with Dr. Henry as ordered by Dr. Murati. She then sent the claimant back to Dr. Mellion and advised him that he was still the court ordered authorized physician. Not true. She then insisted that she had the right to direct the surgical consult referral by Dr. Murati. She then, after communicating with Dr. Murati's office, agreed to the surgical consult with Dr. Moskowitz. She then contacted claimant counsel and refused to authorize the surgery recommended by Dr. Moskowitz and approved by Dr. Murati.⁵

The only issue before the Board on this appeal is whether the Judge exceeded her jurisdiction and authority by stating in paragraph 12 of the July 23, 2007, Order that "[r]espondent must comply with Dr. Murati's proposed medical treatment and referrals until such time that Dr. Murati's authorization is changed by the Court."⁶

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes this appeal should be dismissed as there is no justiciable controversy.

Respondent challenges the Judge's statement that "[r]espondent must comply with Dr. Murati's proposed medical treatment and referrals until such time that Dr. Murati's authorization is changed by the Court."⁷ That merely reiterates the September 21, 2006, Order. Moreover, it is an accurate statement of the law.

By enacting the preliminary hearing procedure, the legislature provided a means for injured workers to receive prompt medical treatment and disability benefits, even when

⁵ Claimant's Brief at 1, 2 (filed Sept. 17, 2007).

⁶ ALJ Order (July 23, 2007) at 3.

⁷ *Id.*

there existed some controversy. Should a worker receive medical treatment or temporary total disability benefits that are later disallowed, respondent is entitled to reimbursement from the Workers Compensation Fund.⁸

In the July 23, 2007, Order, the Judge addressed and correctly described the procedure for a respondent to contest a court-authorized physician's proposed treatment. In addition, there should be no question that ignoring or defying the Judge's orders will not be tolerated. Such conduct places the self-insured respondent at risk for sanctions under the statute regarding fraudulent and abusive acts, K.S.A. 44-5,120.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of November, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge

⁸ See K.S.A. 44-534a.